Appendix.

NOTE: (We print here only such parts of the opinion in the following case as we believe help explain the facts and law involved.)

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF TEXAS, LAREDO DIVISION.

Equity No. 50.

AMBROSE JOHNSON,
Plaintiff,

—against—

RICHMAN & SAMUELS, INC.,
Defendant.

October 12, 1938.

Memorandum:

This suit was filed in the State Court (District Court of Webb County) May 27, 1938, by Ambrose Johnson, a citizen of Texas, against Richman & Samuels, Inc., a corporation domiciled in and a citizen of the State of New York. The amount in controversy, exclusive of interest and costs, is more than $3000, i. e., $6103.44.

On May 27, 1938, citation was issued out of the State Court, directed to the proper officer of Bexar County, commanding him "to summon Richman & Samuels, Inc., by serving Travis B. Moursund, its agent" etc. The return of the Bexar County Officer shows that he served

such process, together with copy of Plaintiff's Petition, in San Antonio on June 7, 1938, at 9:30 A. M. by delivering to Travis Moursund, whom he describes as Defendant's Agent, a copy thereof. Defendant duly removed the case into this Court, and Transcript was filed here July 11, 1938.

On July 14, 1938, Defendant filed its so-called Plea in Abatement, or Motion to Dismiss, seeking to dismiss this case for want of jurisdiction, the claim being that neither the State Court nor this Court has acquired jurisdiction of Defendant. This is a hearing on such Plea or Motion to Dismiss.

2:—According to Plaintiff's Petition, he, during the year 1924, shipped to Richman & Samuels, of the State of New York, a partnership consisting of Louis Richman, Irving Richman, and Meyer Samuels (also of the State of New York), as agent, factor, commission merchant, broker, etc., numerous carload lots or part carload lots of farm products or perishable agricultural commodities. That because of the fraudulent accounts of such partnership and its members, such partnership became and still is indebted to Plaintiff in the sum of $6103.44, with interest thereon from April 31, 1924. The Petition does not affirmatively show that such sum of money was and is payable in Texas.

Plaintiff alleges that Richman & Samuels, Inc. is a corporation organized under the Laws of New York.

There is nothing in Plaintiff's Petition which shows that Defendant assumed the indebtedness of the partnership of Richman & Samuels in Texas, or agreed to pay same in Texas. The inference is that if Defendant assumed such indebtedness, it was assumed and to be performed outside of the State of Texas, i. e., probably in New York State, where both the partnership and its

members and Defendant then had their residence and domicile.

Under these circumstances, it is clear that neither the State Court nor this Court by the serving of the process on Travis Moursund has acquired jurisdiction of the person of Defendant. The rule is thus stated in *Morris & Co.* v. *Skandinavia Ins. Co., Ltd.*, 81 Fed. (2d) 346:

> "However, in the absence of compelling language in the state law, or local state decision to the contrary, such appointments will be construed by the United States Supreme Court to exclude causes of action arising outside the state for which the appointment was given. *Morris & Co.* v. *Skandinavia Ins. Co., supra; Robert Mitchell Furniture Company* v. *Seldon Breck Construction Company*, 257 U. S. 213, 42 S. Ct. 84, 66 L. Ed. 201; *Missouri Pacific Railroad Company* v. *Clarendon Boat Oar Company, Inc.*, 257 U. S. 533, 42 S. Ct. 210, 66 L. Ed. 354."

Plaintiff's Petition shows that Plaintiff's cause of action arose outside of Texas, and the facts here show that at the time (June 7, 1938) the process was served on Moursund, Defendant had ceased doing business in Texas, and had surrendered its Permit to do so.

But Plaintiff says that the appointment of Moursund as the Texas Agent of Defendant had not been revoked on June 7, 1938, when the Process was served on Moursund, and that this is controlling. The cases are to the contrary. *Chipman* v. *Jeffery*, 251 U. S. 373, 64 L. Ed. 314, and cases which follow.

I think the citation and the service thereof should be quashed and held for naught. I do not think, however, that the case should at this time be dismissed for want of jurisdiction. It may be that Plaintiff may amend and

obtain service of process on Defendant, and he should be allowed a reasonable time in which to do so.

Let Order be prepared and presented accordingly.

T. M. KENNERLY,
Judge.

Subsequently the plaintiff filed an amended complaint with the object of removing the objections to the jurisdiction of the court pointed out in the above opinion, but the same court, with Judge V. Allred sitting, in an opinion, dated May 16, 1939, holding that the amended complaint failed to remove the objections to the jurisdiction of the court, stated:

> "Since the amended pleadings do not set up an obligation dischargeable in Texas, but, on the contrary, affirmatively show that an obligation, if any, is performable in New York State, defendant's motion to quash and to dismiss this action will be granted."